UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER
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ART UNIT	PAPER NUMBER
3622	

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Please find below and/or attached an Office communication concerning this application or proceeding.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on _03 April 2003_.

2a) ☐ This action is **FINAL**.   2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) _1-73_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☐ Claim(s) _____ is/are allowed.

6) ☒ Claim(s) _1-73_ is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application)
since a specific reference was included in the first sentence of the specification or in an Application Data Sheet.
37 CFR 1.78.

    a) ☐ The translation of the foreign language provisional application has been received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific
reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1.   Claims 1-73 have been examined. Application 09/836,302 (SYSTEM, METHOD, AND

APPARATUS FOR CREATING AND SECURELY MANAGING ACCOUNTS HOLDING CASH

EQUIVALENTS) has a filing date 04/17/2001.

Claim Rejections - 35 USC § 101

2.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

Claims 55-64 are rejected under 35 U.S.C. 101 because the claimed invention is

directed to non-statutory subject matter. Claims 55-64 are not within the technological

arts.

As an initial matter, the United States Constitution under Art. I, §8, cl. 8 gave

Congress the power to "[p]romote the progress of science and useful arts, by securing

for limited times to authors and inventors the exclusive right to their respective writings

and discoveries". In carrying out this power, Congress authorized under 35 U.S.C.

§101 a grant of a patent to "[w]hoever invents or discovers any new and useful process,

machine, manufacture, or composition or matter, or any new and useful improvement

thereof." Therefore, a fundamental premise is that a patent is a statutorily created

vehicle for Congress to confer an exclusive right to the inventors for "inventions" that

promote the progress of "science and the useful arts". The phrase "technological arts"

has been created and used by the courts to offer another view of the term "useful arts".

See *In re Musgrave*, 167 USPQ (BNA) 280 (CCPA 1970). Hence, the first test of

whether an invention is eligible for a patent is to determine if the invention is within the "technological arts".

Further, despite the express language of §101, several judicially created exceptions have been established to exclude certain subject matter as being patentable subject matter covered by §101. These exceptions include "laws of nature", "natural phenomena", and "abstract ideas". See *Diamond v. Diehr*, 450, U.S. 175, 185, 209 USPQ (BNA) 1, 7 (1981). However, courts have found that even if an invention incorporates abstract ideas, such as mathematical algorithms, the invention may nevertheless be statutory subject matter if the invention as a whole produces a "useful, concrete and tangible result." See *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* 149 F.3d 1368, 1973, 47 USPQ2d (BNA) 1596 (Fed. Cir. 1998).

This "two prong" test was evident when the Court of Customs and Patent Appeals (CCPA) decided an appeal from the Board of Patent Appeals and Interferences (BPAI). See *In re Toma*, 197 USPQ (BNA) 852 (CCPA 1978). In *Toma*, the court held that the recited mathematical algorithm did not render the claim as a whole non-statutory using the Freeman-Walter-Abele test as applied to *Gottschalk v. Benson*, 409 U.S. 63, 175 USPQ (BNA) 673 (1972). Additionally, the court decided separately on the issue of the "technological arts". The court developed a "technological arts" analysis:

> The "technological" or "useful" arts inquiry must focus on whether the claimed subject matter...is statutory, not on whether the product of the claimed subject matter...is statutory, not on whether the prior art which the claimed subject matter purports to replace...is statutory, and not on whether the claimed subject matter is presently perceived to be an improvement over the prior art, e.g., whether it "enhances" the operation of a machine. *In re Toma* at 857.

In *Toma*, the claimed invention was a computer program for translating a source human language (e.g., Russian) into a target human language (e.g., English). The court found that the claimed computer implemented process was within the "technological art" because the claimed invention was an operation being performed by a computer within a computer.

The decision in *State Street Bank & Trust Co. v. Signature Financial Group, Inc.* never addressed this prong of the test. In *State Street Bank & Trust Co.*, the court found that the "mathematical exception" using the Freeman-Walter-Abele test has little, if any, application to determining the presence of statutory subject matter but rather, statutory subject matter should be based on whether the operation produces a "useful, concrete and tangible result". See *State Street Bank & Trust Co.* at 1374. Furthermore, the court found that there was no "business method exception" since the court decisions that purported to create such exceptions were based on novelty or lack of enablement issues and not on statutory grounds. Therefore, the court held that "[w]hether the patent's claims are too broad to be patentable is not to be judged under §101, but rather under §§102, 103 and 112." See *State Street Bank & Trust Co.* at 1377. Both of these analysis goes towards whether the claimed invention is non-statutory because of the presence of an abstract idea. Indeed, *State Street* abolished the Freeman-Walter-Abele test used in *Toma*. However, State Street never addressed the second part of the analysis, i.e., the "technological arts" test established in *Toma* because the invention in *State Street* (i.e., a computerized system for determining the year-end income, expense, and capital gain or loss for the portfolio) was already determined to be within

the technological arts under the *Toma* test.   This dichotomy has been recently

acknowledged by the Board of Patent Appeals and Interferences (BPAI) in affirming a

§101 rejection finding the claimed invention to be non-statutory. See *Ex parte Bowman*,

61 USPQ2d (BNA) 1669 (BdPatApp&Int 2001).

In the present application, independent claim 55 recites a "useful, concrete and

tangible result" (providing a consumer with an incentive to purchase goods and/or

services from a business), however the claims recite no structural limitations (i.e.,

computer implementation), and so they fail the first prong of the test (technological arts).

Dependent claims 56-64 do not remedy this situation as no structural limitations are

recited.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-7, 11, 13-26, 30, 32-39, 41-45, 47, 49-53, 55-61, 65, 67 and 69-73 are

rejected under 35 U.S.C. 102(e) as being anticipated by Postrel (U.S. 6,594,640).

As per claim 1, Postrel teaches:

A computer readable storage medium storing one or more computer programs,

the computer programs comprising instructions for:

receiving one or more messages from a device (see column 1, lines 12-29; column 3, lines 1-30);

accessing a database having a plurality of accounts (see column 1, lines 12-29; column 3, lines 1-30; figure 4);

identifying an account located within the database using information contained in the messages, the account being issued by a business to a consumer (see figure 4; column 3, lines 1-30; column 5, lines 36-60); and

if the messages include information indicating that that consumer has made a purchase from the business, increasing a value of the account (see column 5, lines 15-60; column 6, lines 1-51).

As per claim 2, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the value of the account increases if the consumer makes a purchase using cash (see column 3, lines 30-55; column 11, lines 29-35).

As per claim 3, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the value of the account increases if the consumer makes a purchase using a credit card issued by the business (see column 1, lines 39-44; column 12, lines 15-30).

As per claim 4, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the value of the account increases at an accelerated rate if the consumer makes a purchase from the business during a specified time period (see column 1, lines 39-45).

As per claim 5, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the value of the account increases at an accelerated rate if the consumer makes a purchase from the business over the Internet (see column 1, lines 12-29; column 1, lines 46-53; column 9, lines 55-67).

As per claim 6, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the value of the account increases at an accelerated rate if the consumer makes frequent purchases from the business (see column 1, lines 12-29).

As per claim 7, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the consumer can use the value of the account to purchase goods and/or services from the business (see column 1, lines 12-29; column 7, lines 1-42).

As per claim 11, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the computer programs further comprise instructions for authenticating information contained in the messages (see column 9, lines 6-10).

As per claim 13, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the computer programs further comprise instructions for sending messages to the device which include the value of the account and/or an account history (see figure 3; column 6, lines 6-10).

As per claim 14, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the computer programs further comprise instructions for sending messages to the device which include information that suggests the type or types of goods and/or services to purchase (see column 1, lines 46-60; figure 3).

As per claim 15, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the messages are received from a secure network (see column 11, lines 61-67).

As per claim 16, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the device is an electronic cash register, a point-of-sale terminal, a debit/credit terminal, an electronic kiosk, a cellular telephone, a personal digital assistant, a home computer, or a business computer (see column 1, lines 45-60; column 9, lines 55-67).

As per claim 17, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the messages include one or more of the following: a credit card number, a personal identification code, a bio-metric identification, a password, or a token (see column 1, lines 39-45; column 11, lines 61-67).

As per claim 18, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the computer programs run on a computer system managed by an application service provider (see figure 4, item 20).

As per claim 19, Postrel teaches:

The computer readable storage medium of Claim 1 wherein the computer programs run on a computer system managed by the business that issued the account (see figure 4).

Claim 20 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 21 contains the same limitation as claim 2 therefore the same rejection is applied.

Claim 22 contains the same limitation as claim 3 therefore the same rejection is applied.

Claim 23 contains the same limitation as claim 4 therefore the same rejection is applied.

Claim 24 contains the same limitation as claim 5 therefore the same rejection is applied.

Claim 25 contains the same limitation as claim 6 therefore the same rejection is applied.

Claim 26 contains the same limitation as claim 7 therefore the same rejection is applied.

Claim 30 contains the same limitation as claim 11 therefore the same rejection is applied.

Claim 32 contains the same limitation as claim 13 therefore the same rejection is applied.

Claim 33 contains the same limitation as claim 14 therefore the same rejection is applied.

Claim 34 contains the same limitation as claim 15 therefore the same rejection is applied.

Claim 35 contains the same limitation as claim 16 therefore the same rejection is applied.

Claim 36 contains the same limitation as claim 17 therefore the same rejection is applied.

Claim 37 contains the same limitation as claim 18 therefore the same rejection is applied.

Claim 38 contains the same limitation as claim 19 therefore the same rejection is applied.

Claim 39 contains the same limitation as claim 1 therefore the same rejection is applied.

As per claim 41, Postrel teaches:

The computer readable storage medium of Claim 39 wherein the computer programs further comprise instructions for receiving authentication information an authentication port, the authentication information for identifying whether the consumer can access the account (see column 9, lines 55-67).

Claim 42 contains the same limitation as claim 17 therefore the same rejection is applied.

As per claim 43, Postrel teaches:

The computer readable storage medium of Claim 39 wherein the computer programs further comprise instructions for receiving from a magnetic card reader the information for identifying the account (see column 9, lines 55-67).

As per claim 44, Postrel teaches:

The computer readable storage medium of Claim 39 the computer programs further comprise instructions for receiving from an input keypad information for identifying the account (see column 11, lines 61-67).

Claim 45 contains the same limitation as claim 16 therefore the same rejection is applied.

Claim 47 contains the same limitation as claim 39 therefore the same rejection is applied.

Claim 49 contains the same limitation as claim 41 therefore the same rejection is applied.

Claim 50 contains the same limitation as claim 42 therefore the same rejection is applied.

Claim 51 contains the same limitation as claim 43 therefore the same rejection is applied.

Claim 52 contains the same limitation as claim 44 therefore the same rejection is applied.

Claim 53 contains the same limitation as claim 45 therefore the same rejection is applied.

Claim 55 contains the same limitation as claim 1 therefore the same rejection is applied.

Claim 56 contains the same limitation as claim 2 therefore the same rejection is applied.

Claim 57 contains the same limitation as claim 3 therefore the same rejection is applied.

Claim 58 contains the same limitation as claim 4 therefore the same rejection is applied.

Claim 59 contains the same limitation as claim 5 therefore the same rejection is applied.

Claim 60 contains the same limitation as claim 6 therefore the same rejection is applied.

Claim 61 contains the same limitation as claim 7 therefore the same rejection is applied.

As per claim 65, Postrel teaches:

A method for distributing benefits, the method comprising: receiving one or more messages from a device;

accessing a database containing a plurality of accounts (see column 4, lines 3-44);

identifying an account located within the database using information contained in the messages, the account being associated with a benefit recipient (see column 4, lines 3-44); and

decreasing a value of the account, if the messages include information indicating

that that benefit recipient has purchased goods and/or services from a business (see

column 1, lines 12-29; column 4, lines 3-44; column 6, lines 35-38; column 7, lines 31-

33; column 11, line 61 – column 12, line 8).

Claim 67 contains the same limitations as claim 11 therefore the same rejection

is applied.

As per claim 69, the method of Claim 65 contains the same limitations as claim

13 therefore the same rejection is applied.

As per claim 70, the method of Claim 65 contains the same limitations as claim

15 therefore the same rejection is applied.

As per claim 71, the method of Claim contains the same limitations as claim 16

therefore the same rejection is applied.

As per claim 72, the method of Claim 65 contains the same limitations as claim

17 therefore the same rejection is applied.

As per claim 73, he method of Claim 65 contains the same limitations as claim 18

therefore the same rejection is applied.

Claim Rejections - 35 USC § 103

4.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set
forth in section 102 of this title, if the differences between the subject matter sought to be patented and
the prior art are such that the subject matter as a whole would have been obvious at the time the
invention was made to a person having ordinary skill in the art to which said subject matter pertains.
Patentability shall not be negatived by the manner in which the invention was made.

Claims 8-10, 27-29 and 62-64 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Postrel (U.S. 6,594,640) in view of Acres (U.S. 6,371,852).

As per claim 8, Postrel fails to teach:

The computer readable storage medium of Claim 1 wherein the value of the

account increases at a one-to-one ratio if the consumer deposits money into the

account. However, Acres teaches about a system where the value of an account

increases at a one-to-one ratio if the consumer deposits money into the account (see

column 6, lines 33-59). Therefore, it would have been obvious to a person of ordinary

skill in the art at the time the application was made, to know that it would be a business

decision for the Postrel system to decide to match one-to-one each money deposit that

a consumer makes into his or her account, as taught by Acres. This feature would be

another incentive for consumers to participate in the Postrel reward program, as

consumers would be rewarded by matching their deposit contribution into a Postrel

reward account.

As per claim 9, Postrel fails to teach:

The computer readable storage medium of Claim 1 wherein the value of the

account increases at a ratio, which is greater than one-to-one, if the consumer deposits

money into the account. However, Acres teaches about a system where the value of an

account increases by a ratio other than a one-to-one ratio if the consumer deposits

money into the account (see column 6, lines 33-59). Therefore, it would have been

obvious to a person of ordinary skill in the art at the time the application was made, to

know that it would be a business decision for the Postrel system to decide to match

each credit deposit in a consumer account in a ratio other than one-to-one, as taught by Acres. This feature would be another incentive for consumers to participate in the Postrel reward program, as consumers would be rewarded by getting a return for the money that they deposit into the Postrel reward account.

As per claim 10, Postrel fails to teach:

The computer readable storage medium of Claim 1 wherein the value of the account accrues interest at a predetermined rate. However, Acres teaches about a system where the value of an account increases by a ratio other than a one-to-one ratio if the consumer deposits money into the account (see column 6, lines 33-59). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that it would be a business decision for the Postrel system to increase the money deposited in a consumer's account by some predetermined rate, as taught by Acres. This feature would be another incentive for consumers to participate in the Postrel reward program, as consumers would be rewarded by getting a return for the money that they deposit into a Postrel reward account.

Claim 27 contains the same limitation as claim 8 therefore the same rejection is applied.

Claim 28 contains the same limitation as claim 9 therefore the same rejection is applied.

Claim 29 contains the same limitation as claim 10 therefore the same rejection is applied.

Claim 62 contains the same limitation as claim 8 therefore the same rejection is applied.

Claim 63 contains the same limitation as claim 9 therefore the same rejection is applied.

Claim 64 contains the same limitation as claim 10 therefore the same rejection is applied.

Claims 12, 31, 40, 48 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Postrel (U.S. 6,594,640) in view of Limsico (U.S. 6,662,228).

As per claim 12, Postrel fails to teach:

The computer readable storage medium of Claim 1 wherein the computer programs further comprises instructions for decrypting the messages. However, Limsico teaches about an Internet protocol that is a secure version of the HTTP protocol normally used in the Internet that uses certificates and which identifies the communicating machines while invoking encryption/decryption libraries to encrypt communications between computers or other machines. This feature would avoid giving users unencrypted access to a computer system over a network like the Internet which is not secured and which may pose serious risks to the integrity and privacy of the data on the computer system (see column 4, lines 1-15; column 3, lines 44-54). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that Postrel would allow the users to login and communicate with the computer system using encrypting/decrypting messages for the

purpose of securing the integrity and privacy of the data, as taught by Limsico. This feature would add security protection to consumers' accounts.

Claim 31 contains the same limitation as claim 12 therefore the same rejection is applied.

As per claim 40, the computer readable storage medium of Claim 39 contains the same limitations as claim 12 therefore the same rejection is applied.

Claim 48 contains the same limitation as claim 40 therefore the same rejection is applied.

As per claim 68, the method of Claim 65 contains the same limitations as claim 12 therefore the same rejection is applied.

Claims 46 and 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Postrel (U.S. 6,594,640) in view of Devine et al (U.S. 6,397,242).

As per claim 46, Postrel fails to teach:

The computer program readable storage medium of Claim 39 wherein the one or more computer programs have a segmented architecture. However, Devine teaches that most modern computer systems have either a segmented architecture or "nonvirtualizable" instructions, or both (see column 9, lines 50-60). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that it would be a business decision for Postrel to include one or more computer programs with segmented architecture, as taught by Devine. Whether or not one or more computer programs have a segmented architecture would not patentably distinguish the claimed invention from the prior art.

Claim 54 contains the same limitation as claim 46 therefore the same rejection is applied.

Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Postrel (U.S. 6,594,640).

As per claim 66, Postrel fails to teach:

The method of Claim 65 wherein the value of the account increases if a governmental agency deposits non-cash benefits into the account. However, Postrel teaches, "Upon user access, the trading server would, in these cases, modify the premiums offered to reflect the immediately attainable items for the current user and may additionally display or provide access to premiums that may be acquired through payment by other means to make up the difference between the user's available points and the points required to accept the offer" (see column 11, lines 29-35). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the application was made, to know that a government agency -- such as a welfare agency which hands out food stamps -- would deposit credit points to a customer account that would only be redeemable for groceries. Therefore, a government agency using the Postrel system would have better control of its accounts because the money handed out would be allocated only to its intended purpose.

Conclusion

5.   The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- The article <u>Building Brand Loyalty Chase</u> teaches that the eighth-largest debit card issuer, Chase began issuing debit cards co-branded with Houston-based Continental Airlines.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to DANIEL LASTRA whose telephone number is 703-306-5933. The examiner can normally be reached on 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, ERIC W STAMBER can be reached on 703-305-8469. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.

Daniel Lastra
December 7, 2003